

## 51 Am. Jur. 2d Licenses and Permits § 6

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Licenses and Permits  
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### I. Definition and Nature of License

## § 6. Construction of laws

[Topic Summary](#) [Correlation Table](#) [References](#)

### West's Key Number Digest

West's Key Number Digest, [Licenses](#) 1, 8(1), 36

Courts cannot construe a statute to confer implicit authority to license an occupation when such a construction would contravene the legislature's apparently deliberate failure to explicitly grant such authority.<sup>1</sup> Rather, the only authority which may be implied to license an occupation must stem from the state's police power.<sup>2</sup>

In construing a license tax law, courts regard the substance and purpose of the law rather than its form and language.<sup>3</sup> In general, any doubt as to the meaning and scope of language imposing a license tax should be resolved in favor of the taxpayer.<sup>4</sup> Similarly, penal statutes involving licensure are construed in favor of the licensee and against the regulatory authority.<sup>5</sup>

Where a licensing statute is enacted pursuant to a state's police powers,<sup>6</sup> the legislative intent is that the law be interpreted broadly<sup>7</sup> so that particular licensees are not able easily to evade the statute's protective purposes.<sup>8</sup> Stated conversely, in some jurisdictions the language in licensing statutes must be strictly construed against a person claiming an exemption therefrom.<sup>9</sup>

If the purpose of a licensing statute is not to punish but to protect consumers and the public who deal with members of a particular profession or trade, the statute is considered nonpenal.<sup>10</sup> Although an agency generally has wide discretion in interpreting a statute it administers, this discretion is somewhat more limited where the statute being interpreted authorizes sanctions or penalties against a person's professional license.<sup>11</sup>

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### Footnotes

<sup>1</sup> [In re 1994 and 1995 Shoreline Imp. Contractor Licenses of Landview Landscaping, Inc.](#), 546 N.W.2d 747 (Minn. Ct. App. 1996).

<sup>2</sup> § 9.

<sup>3</sup> [Estes v. City of Richmond](#), 193 Va. 181, 68 S.E.2d 109 (1951).

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## § 6. Construction of laws, 51 Am. Jur. 2d Licenses and Permits § 6

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For a general discussion of the validity of licensing statutes under various constitutional provisions, see [Am. Jur. 2d, Constitutional Law §§ 456, 550, 565](#).

<sup>4</sup> [Treat v. White](#), 181 U.S. 264, 21 S. Ct. 611, 45 L. Ed. 853 (1901); [City of Sedalia ex rel. and to Use of Ferguson v. Shell Petroleum Corp.](#), 81 F.2d 193, 106 A.L.R. 1327 (C.C.A. 8th Cir. 1936); [Davison v. F. W. Woolworth Co.](#), 186 Ga. 663, 198 S.E. 738, 118 A.L.R. 1363 (1938); [Young v. Town of Vienna](#), 203 Va. 265, 123 S.E.2d 388, 93 A.L.R.2d 86 (1962); [Coordinating Council for Independent Living, Inc. v. Palmer](#), 209 W. Va. 274, 546 S.E.2d 454 (2001).

<sup>5</sup> [Djokic v. Department of Business and Professional Regulation, Div. of Real Estate, State of Fla.](#), 875 So. 2d 693 (Fla. Dist. Ct. App. 4th Dist. 2004).

<sup>6</sup> § 9.

<sup>7</sup> [In re McNeal](#), 286 B.R. 910 (Bankr. N.D. Cal. 2002) (applying California law); [Kaplan v. Tabb Associates, Inc.](#), 276 Ill. App. 3d 320, 212 Ill. Dec. 720, 657 N.E.2d 1065 (1st Dist. 1995); [Burns v. Board of Nursing of State of Iowa](#), 528 N.W.2d 602 (Iowa 1995).

<sup>8</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

<sup>9</sup> [Brimer v. Arkansas Contractors Licensing Bd.](#), 312 Ark. 401, 849 S.W.2d 948 (1993); [Far East Services Corp. v. Tracker Marine, L.L.C.](#), 246 S.W.3d 486, 64 U.C.C. Rep. Serv. 2d 584 (Mo. Ct. App. S.D. 2007); [Quick Start Const. Corp. v. Staiger](#), 77 A.D.3d 900, 910 N.Y.S.2d 131 (2d Dep’t 2010); [Coordinating Council for Independent Living, Inc. v. Palmer](#), 209 W. Va. 274, 546 S.E.2d 454 (2001).

<sup>10</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998); [Hurst v. Sandy](#), 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997) (purpose is regulation rather than imposition of liability). As to revocation as nonpenal in nature, see § 58.

<sup>11</sup> [Kany v. Florida Engineers Management Corp.](#), 948 So. 2d 948 (Fla. Dist. Ct. App. 5th Dist. 2007).